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MISSOURI  
AUTO SERVICE CONTRACT  
TASK FORCE



REPORT & RECOMMENDATIONS  
OF THE  
OFFICE OF THE ATTORNEY GENERAL  
OF MISSOURI

JANUARY 2011

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**RECOMMENDATION NO. 6**  
**ENHANCE DEPARTMENT REGULATION OF THE CONTRACT CONTENT**

**The Department of Insurance, Financial Institutions and Professional Registration should promulgate an interpretive rule to enhance its oversight of the contracts.**

The failure to write the service contracts in a consumer-friendly manner had a significant adverse effect on consumers understanding the contract that they had purchased.<sup>12</sup>

The Attorney General recommends that the following rule be promulgated by DIFP:

**20 CSR 200-18.030 Minimum Standards for Motor Vehicle Extended Service Contracts**

*PURPOSE: This rule specifies the minimum standards required under Section 385.206, RSMo to be found in motor vehicle extended service contracts issued by providers as allowed under Section 385.202.*

No motor vehicle extended service contract which conflicts or fails to comply with any of the criteria set forth in this guideline shall be issued, sold, or offered in this state:

- (1) Clear and Understandable Language. The motor vehicle extended service contracts shall be written in such a manner that the language is likely to be comprehended by a reasonable person.
- (2) Easy to Read Type. The contracts must be in no less than 9 point type, unless more conspicuous type is required by a specific provision in this rule. All labels required in this rule shall be in no less than 12 point type.
- (3) Conspicuous Disclosure of Statutory Requirements. The contracts shall include and conspicuously disclose all provisions required by Section 385.206, RSMo and this rule:

**(A) Parties to the Contract.**

1. Identity of Provider. The provider, who is the obligor on the service contract, shall be identified in a conspicuous manner on the first page of the main pre-printed text of the contract in no less than 10 point type. Such identification shall include, at a minimum, the provider's name, the street address, city, state and zip code of the provider's principal place of business, a telephone number, and no less than a summary of its responsibilities as a provider.

2. Identity of Administrator. If the provider has contracted with another party to administer the terms of the contract, the administrator shall be identified in a conspicuous manner. Such identification shall include, at a minimum, the administrator's name, the street address, city, state and zip

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<sup>12</sup> Testimony of Ruth Portagee and William "Brandon" Brubaker.

code of the administrator's principal place of business, a telephone number, and a description of its responsibilities as an administrator.

3. Identity of Service Contract Business Entity Producer. If the provider has appointed a business entity to sell, offer for sale, or solicit the sale of a motor vehicle extended service contract, the business entity producer on that contract shall be identified in a conspicuous manner and in no less than 10 point type. Such identification shall include, at a minimum, the sales agency's name, and the street address, city, state and zip code of the agency's principal place of business.

4. Identity of Contract Holder. The contract holder, who is the purchaser of the contract, shall be identified in a conspicuous manner and in no less than 10 point type. Such identification shall include, at a minimum, the contract holder's name and, if available, the street address, city, state and zip code of the contract holder.

(B) 20 Business Day Free Look Period. Motor vehicle extended service contracts shall contain a free look provision.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as "Free Look Period."

2. For purposes of the 20 business day free look period, the cancellation is accomplished on the day the contract holder places the return in the mail.

3. The provision shall advise the contract holder to keep a copy of the service contract for his records, even if the fully executed contract has been returned.

(C) Purchase Price. Motor vehicle extended service contracts shall contain the total purchase price or fee. The total purchase price or fee shall be listed in a conspicuous manner and in no less than 10 point font.

(D) Terms of Coverage. Motor vehicle extended service contracts shall contain a terms of coverage provision. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Coverage – What This Service Contract Does Cover," or similar designation.

(E) Exclusions from Coverage. If the motor vehicle extended service contract contains any exclusion(s) from coverage, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Exclusions – What This Service Contract Does Not Cover," or similar designation.

(F) Exclusion for Consequential Damages or Preexisting Conditions. If the motor vehicle extended service contract contains any exclusion for consequential damages or preexisting conditions, it shall appear in the main pre-printed text of the contract,

shall appear as a separate paragraph or paragraphs, and shall be conspicuously labeled.

(G) Limitation of Liability. If the motor vehicle extended service contract contains any limitations of liability, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Limitations of Liability – The Maximum That Will Be Paid," or similar designation.

(H) Deductible. If the motor vehicle service contract contains any deductible, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Deductible," or similar designation.

(I) Claims. Motor vehicle extended service contracts shall contain a provision describing the procedures, terms and conditions for submitting a claim under the terms of the contract.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as "What to Do If You have a Mechanical Breakdown or a Claim", or similar designation.

2. The provision shall describe that the contract holder may submit a claim and shall describe the procedure for doing so. The name, address and telephone number of the Claims Administrator shall be included in this paragraph. If the entity responsible for paying claims is different than the entity determining whether to pay the claims, the name, street address, city, state, zip code and telephone number of each principal place of business and a description of each entities' obligations shall be provided in this paragraph.

(J) Non-original Parts or Substitute Service. If the motor vehicle service contract contains any conditions upon which the use of non-original parts or substitute service is allowed, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Used Parts – When Non-original Parts or Substitute Service are Permitted."

(K) Contract Holder's Duties. If the motor vehicle service contract contains any obligations or duties of the service contract holder, such as the duty to protect against further damage or the duty to have certain service or maintenance performed, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "Contract Holder Duties – What You Must Do." If the retention of receipts is required for proof of service or maintenance performed at the time of repair, the paragraph shall conspicuously state such requirement. Only receipts from service or maintenance performed after the purchase date of the service contract may be required.

(L) Contract Holder's Rights to Cancel after 20 Business Days. Motor vehicle service contracts shall contain a provision describing the contract holder's subsequent right to cancel and obtain a refund of any unearned contract fee.

1. The provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph and shall be labeled as "How You May Cancel After 20 Business Days."
2. The provision shall describe that the contract holder may cancel the contract by sending a written cancellation, along with a copy of the contract to the Provider. The cancellation shall be effective on the day the cancellation is mailed by the contract holder. The name and address of the Provider shall be included in this paragraph.
3. This provision shall state that the unearned fee shall be calculated on a pro rata basis, and shall be based on the greater of the days in force or miles driven compared to the total terms of the contract.
4. The provision shall describe the Provider's obligation to pay to the contract holder a 10% penalty per month for any due refund that is not fully paid within 30 days of return of the contract to the provider from the day the contract holder places the return in the mail.
5. The provision shall advise the contract holder to retain the consumer copy of the cancelled contract.
6. The provision shall advise the contract holder that the provider will mail within 15 days a written notice of cancellation to the contract holder, which shall include a calculation of the unearned provider fee.

(M) Transferability. If the motor vehicle extended service contract contains any terms, restrictions or conditions governing the transferability of the contract, the provision shall be appropriately captioned, shall appear in the main pre-printed text of the contract, shall appear as a separate paragraph or paragraphs, and shall be labeled as "How this Contract May be Transferred."

(N) Missouri Department Authority.

1. Motor vehicle extended service contracts shall contain a provision describing the provider's registration status with the Missouri Department of Insurance, Financial Institution and Professional Registration pursuant to Section 385.202, RSMo. The contract shall also include the Department's telephone numbers of (800) 726-7390 and (573) 751-2640 and the website address of <http://difp.mo.gov>.
2. Motor vehicle service contracts insured under a reimbursement insurance policy under 385.202.3 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after

proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." The provision shall also provide the insurer's name and the street address, city, state and zip code of the insurer's principal place of business shall be included. Instructions on making a claim against the insurance company shall also be included. This provision shall also specify that a claim against the provider for return of unearned provider fee may be claimed against the insurer.

3. Motor vehicle service contracts not insured under a reimbursement insurance policy pursuant to 385.202.3 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy."

**RECOMMENDATION NO. 7**  
**ENHANCE DEPARTMENT REGULATION OF THE**  
**TELEPHONE OFFERS OF THE CONTRACTS**

**The Department of Insurance, Financial Institutions and Professional Registration should promulgate a rule to implement its oversight of the telemarketing offer, sale and solicitation for sale of contracts.**

The misrepresentations and omissions of material fact that sales representatives made during their phone calls were a material factor in consumers being tricked into purchasing these contracts.<sup>13</sup>

The Attorney General recommends that the following rule be promulgated by DIFP:

**20 CSR 200-18.030 Telephone Offers by Motor Vehicle Extended Service Contract Producers**

*PURPOSE: Due to numerous conditions, limitations and exclusions typically found in motor vehicle extended service contracts, the formation of a binding motor vehicle extended service contract through an oral offer for sale is complex. Because producers and the contract holder must reach agreement on these terms in order to form a contract, the material terms of the contract must be discussed, understood and confirmed before payment is received. This rule establishes a minimum articulation of material terms and limitations in the service contract prior to requesting payment from a consumer in order for the producer to comply with the requirements of Section 385.208 and avail itself of the exemption under Section 407.1085 of Missouri's Telemarketing Practices Act.*

(1) A producer selling, offering for sale, or soliciting the sale of a motor vehicle extended service contract by telephone shall, prior to requesting any payment information or agreement for payment from a consumer, describe to that consumer the particular motor vehicle extended service contract being offered.

(2) At a minimum, the producer must be familiar with and describe to the consumer the following material terms before requesting agreement for payment from a consumer or processing such payment:

(A) Contract Obligor. The legal corporate name of the service contract obligor (provider or manufacturer) that is issuing the contract must be disclosed, along with the city and state of its principal place of business. If the contract is issued by a provider, this obligor must be the provider registered as such with the Director. Because the use of a fictitious name by a legal obligor is misleading, it is not permitted.

(B) Business Entity Producer. The name of the business entity producer offering or soliciting the sale of the motor vehicle extended service contract must be disclosed, and its relationship with the provider or manufacturer issuing the motor vehicle extended service contract shall be described.

<sup>13</sup>

Testimony of Charles Hiser, Ruth Portagee, Donna Acosta, and Dean Scoular.

(C) Contract Administrator. The legal corporate name of the service contract administrator that is administering the contract, if applicable, must be disclosed, along with the city and state of its principal place of business, and its relationship with the obligor.

(D) Coverage. The terms used to describe coverage must reasonably summarize the actual coverage by using reference to specific parts as set forth in the specific contract being offered. The use of terms such as "power train" and "bumper to bumper" is misleading without accompanying detail summarizing specific covered parts or their categories (title plus description of major components) and relevant exclusions and conditions.

(E) Exclusions from Coverage. If exclusions from coverage exist in the service contract being offered for sale to the consumer, the material exclusions must be clearly described to the consumer. Exclusions from coverage must be described with reference to specific parts, types of coverage, waiting periods, or pre-existing conditions as set forth in the specific contract being offered.

(F) Liability Limits. If limitations to coverage exist in the service contract being offered for sale to the consumer, the limitations must be clearly described to the consumer. This disclosure would include a description of any maximum per vehicle liability limits to actual cash value of the vehicle or a specific dollar amount, and any maximum per occurrence limits.

(G) Contract Holder's Duties. If the motor vehicle extended service contract contains any obligations or duties of the service contract holder, such as the duty to protect against further damage or the duty to have certain service or maintenance performed, including any duty to retain receipts of service or maintenance performed, the obligations must be clearly described to the consumer.

(H) Contract Price. The total purchase price of the service contract must be disclosed.

(I) Free Look period. The free look period required by law must be clearly described to the consumer.

1. For telephone sales, this is a 20 business day free look period and is up to and including the twentieth business day following the postmark date of the mailing of the contract to the contract holder as required in section 385.206.14, RSMo.

2. The name and address to which the cancellation is to be mailed shall be clearly described. Nothing more than a requirement that the service contract be returned by mail shall be required.

3. No cancellation fee or other charges are permitted for a cancellation during the free look period.

The cancellation is effective on the date of the return mailing of the service contract is postmarked.



(J) Cancellation Procedure and Consumers' Rights to Refund. The procedure and all requirements for cancellation and refund shall be clearly described to the consumer.

(K) Claims Handling. The procedure and all requirements for claims shall be clearly described to the consumer, including the name and address of the provider or third party administrator to which claims must be submitted, and a description of the duties of the provider and administrator.

(L) Mandatory Arbitration and Waiver of Rights. Any provisions which limit a consumer's rights to seek redress in the civil courts and require arbitration must be clearly and fully described to the consumer.

(3) Prior to processing any payment information or agreement for payment from a consumer, the sales agent or employee of the sales agency must confirm that the consumer understands each of the disclosures required by this rule with an affirmative response from the consumer.



MISSOURI DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION  
**INSTRUCTIONS FOR MOTOR VEHICLE EXTENDED SERVICE CONTRACT  
PROVIDER INITIAL REGISTRATION**

Enclosed is the registration form for a service contract provider. Any person who is responsible for the issuance of a motor vehicle extended service contract is a service contract provider and is required to register with the Missouri Department of Insurance, Financial Institutions and Professional Registration.

Each provider is required to register before issuing any service contract. Each provider is also required to renew its registration annually between January 1 and February 1 of each year after the year of the provider's first registration.

Payment of the registration fee must accompany each registration. The registration fee is five hundred dollars (\$500).

If the provider is "doing business as" a DBA, submit a certified copy of the Certificate in Fact from the Missouri Secretary of State.

Questions regarding this registration or the regulation of motor vehicle extended service contracts may be directed either by telephone to the Service Contract Regulation section of the Missouri Department of Insurance, Financial Institutions & Professional Registration at (573) 526-5001 or (573) 751-4362 or in writing to Service Contract Regulation, Missouri Department of Insurance, Financial Institutions & Professional Registration, P.O. Box 690, Jefferson City, MO 65102.

provider is legally obligated to pay or shall provide the service for which the provider is legally obligated to perform according to the provider's contractual obligations under the motor vehicle extended service contracts issued or sold by the provider.

**Requirements for sale of contracts--dealers not to be used as fronting companies--required contract contents.**

385.206. 1. No person shall directly sell, offer for sale, or solicit the sale of a motor vehicle extended service contract to a consumer, other than the following:

- (1) A dealer;
- (2) A manufacturer of motor vehicles, as defined in section 301.010, RSMo;
- (3) A federally insured depository institution;
- (4) A lender licensed and defined under sections 367.100 to 367.215, RSMo; or
- (5) An administrator, provider, manufacturer, or person working in concert with an administrator, provider, or manufacturer marketing or selling a motor vehicle extended service contract demonstrating financial responsibility as set forth in section 385.202.

2. No administrator or provider shall use a dealer as a fronting company, and no dealer shall act as a fronting company. For purposes of this subsection, "fronting company" means a dealer that authorizes a third-party administrator or provider to use its name or business to evade or circumvent the provisions of subsection 1 of this section.

3. Motor vehicle extended service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language, and the entire contract shall be printed or typed in easy-to-read type and conspicuously disclose the requirements in this section, as applicable.

4. Motor vehicle extended service contracts insured under a reimbursement insurance policy under subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the insurer.

5. Motor vehicle extended service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 385.202 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the provider.

6. Motor vehicle extended service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the motor vehicle extended service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

7. Motor vehicle extended service contracts shall state conspicuously the total purchase price and the terms under which the motor vehicle extended service contract is sold. The purchase price is not required to be preprinted on the motor vehicle extended service contract and may be negotiated at the time of sale with the service contract holder.

8. If prior approval of repair work is required, the motor vehicle extended service contracts shall state conspicuously the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

9. Motor vehicle extended service contracts shall state conspicuously the existence of any deductible amount.

10. Motor vehicle extended service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

11. Motor vehicle extended service contracts shall state the conditions upon which the use of nonoriginal manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

12. Motor vehicle extended service contracts shall state any terms, restrictions, or conditions governing the transferability of the motor vehicle extended service contract.

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not subject to registration  
chs. 600-655

April 27, 2010

(5) Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of one hundred dollars (\$100) or less, exclusive of sales tax.

- C. Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products need only comply with sections 3F, 5A, 5D - 5L, 6, and 10, as applicable, of this Act.
- D. The types of agreements referred to in subsections (B) and (C) of this section, and service contracts governed pursuant to this {chapter} are not insurance and do not have to comply with any provision of the insurance law of this state.

Section 2. Definitions

As used in this Act:

- A. "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan or who is responsible for any submission required by the Act.
- B. "Commissioner" means the commissioner of insurance of this state.
- C. "Consumer" means a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family or household purposes and not for business or research purposes.
- D. "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only and does not include repair or replacement.
- E. "Motor Vehicle Manufacturer" means a person that:
- (1) Manufactures or produces motor vehicles and sells motor vehicles under its own name or label;
  - (2) Is a wholly owned subsidiary of the person who manufactures or produces motor vehicles;
  - (3) Is a corporation which owns 100 percent of the person who manufactures or produces motor vehicles;

service contracts  
warranties  
maint. agreements

April 27, 2010

contract holder may cancel the service contract and the provider shall refund to the contract holder 100% of the unearned pro rata provider fee, less any claims paid. A reasonable administrative fee may be charged by the provider not to exceed 10% of the gross provider fee paid by the service contract holder.

H. Premium Taxes:

- (1) Provider fees collected on service contracts shall not be subject to premium taxes.
- (2) Premiums for reimbursement insurance policies shall be subject to applicable taxes.

I. Except for the registration requirements in Section 3C, providers and related service contract sellers, administrators, and other persons marketing, selling or offering to sell service contracts are exempt from any licensing requirements of this state.

J. The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of this state's insurance law.

Section 4.

**Required Disclosures – Reimbursement Insurance Policy**

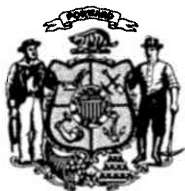
A. Reimbursement insurance policies insuring service contracts issued, sold or offered for sale in this state shall state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums the provider is legally obligated to pay or, in the event of the provider's non-performance, shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

B. In the event covered service is not provided by the service contract provider within 60 days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

Section 5.

**Required Disclosure – Service Contracts**

A. Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state shall be written, printed, or typed in clear,



State of Wisconsin  
2011 - 2012 LEGISLATURE



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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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- 1 AN ACT *to amend* 601.32 (1); and *to create* 100.70, 600.01 (1) (b) 12., 601.31 (1)
- 2 (kr) and 632.19 of the statutes; **relating to:** regulating certain service
- 3 contracts, granting rule-making authority, and providing a penalty.

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

SECTION 1. 100.70 of the statutes is created to read:

\*\*\*\*NOTE: Section 1 (A) of the SCIC Industry Model Act (model act) provides: "The purposes of this Act is to create a legal framework within which service contracts are defined, may be sold and are regulated in this state. It declares that service contracts, as defined, are not insurance and not otherwise subject to the insurance code. It adds significant consumer protections and eliminates unnecessary administration." I did not include the foregoing statement of legislative intent because it is not necessary. In addition, under the LRB's drafting policies, the LRB generally includes statements of legislative intent only in recodification bills or when necessary to assist a court in upholding a bill against a constitutional challenge.

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1 **100.70 Service contracts. (1) DEFINITIONS.** In this section:

2 (a) "Administrator" means a person appointed by a provider under sub. (3) (a).

3 ~~\*\*\*\*NOTE: The model act's definition duplicates language set forth in sub. (3) (a). Therefore, I simplified the model act's definition by making a cross-reference to sub. (3) (a).~~

4 (b) "Commissioner" means the commissioner of insurance.

5 ~~\*\*\*\*NOTE: As under the model act, the commissioner of insurance is responsible for administering and enforcing this section. However, because service contracts are not insurance, you could have DATCP, rather than the Office of the Commissioner of Insurance (OCI), administer and enforce this section. On the other hand, there is precedent under current law for OCI to administer requirements that are not insurance products. See OCI's regulation of vehicle protection product warranties under s. 100.203.~~

6 (c) "Consumer" means an individual who buys other than for purposes of resale  
7 any tangible personal property that is distributed in commerce and that is normally  
8 used for personal, family, or household purposes and not for business or research  
9 purposes.

10 ~~\*\*\*\*NOTE: The model act refers to a "natural person." Under the LRB's drafting policies, "individual" is the preferred term.~~

11 (d) "Maintenance agreement" means a contract of ~~limited~~ <sup>a specified</sup> duration that  
12 provides for scheduled maintenance only and does not include repair or replacement.

13 ~~\*\*\*\*NOTE: The above should be revised to clarify what constitutes a "limited duration."~~

14 (e) "Motor vehicle manufacturer" means a person that does or satisfies any of  
15 the following:

16 1. Manufactures or produces motor vehicles and sells motor vehicles under its  
17 own name or label.

18 2. Is a wholly owned subsidiary of the person who manufactures or produces  
19 motor vehicles.

20 3. Is a corporation which owns 100 percent of the person who manufactures or  
21 produces motor vehicles.

1           4. Does not manufacture or produce motor vehicles, but sells motor vehicles  
2 under the trade name or label of another person who manufactures or produces  
3 motor vehicles.

4           5. Manufactures or produces motor vehicles and sells motor vehicles under the  
5 trade name or label of another person who manufactures or produces motor vehicles.

6           6. Does not manufacture or produce motor vehicles but, pursuant to a written  
7 contract, licenses the use of its trade name or label to another person who  
8 manufactures or produces motor vehicles and who sells motor vehicles under the  
9 licensor's trade name or label.

10           (f) "Nonoriginal manufacturer's parts" means replacement parts for property  
11 that are not made for or by the original manufacturer of the property.

\*\*\*NOTE: The model act also provides that such parts are commonly referred to as  
"after market parts." Because that term is not otherwise used in the act, is not defined,  
and does not add anything to the meaning of "nonoriginal manufacturer's parts, I did not  
include the term in the above.

\*\*\*NOTE: I added "for property" after "replacement parts."

\*\*\*NOTE: The model act defines "person" as "an individual, partnership,  
corporation, incorporated or unincorporated association, joint stock company, reciprocal,  
syndicate or any similar entity or combination of entities acting in concert." However, I  
did not include the definition because it is not necessary. Current law defines "person"  
broadly to include "all partnerships, associations and bodies politic or corporate." See s.  
990.01 (26). In addition, under the LRB's drafting policies, "person" is intended to refer  
to both human beings and nonhuman entities.

12           (g) "Premium" means the consideration paid to an insurer for a reimbursement  
13 insurance policy.

14           (h) "Provider" means a person who is contractually obligated to a service  
15 contract holder under the terms of a service contract.

16           (i) "Provider fee" means the consideration paid for a service contract.

17           (j) "Reimbursement insurance policy" means a policy of insurance issued to a  
18 provider to either provide reimbursement to the provider under the terms of the



1 insured service contracts issued or sold by the provider or, in the event of the  
2 provider's nonperformance, to pay on behalf of the provider all covered contractual  
3 obligations incurred by the provider under the terms of the insured service contracts  
4 issued or sold by the provider.

5 (k) "Service contract" means a contract or agreement for a separately stated  
6 consideration for a specific duration to perform the repair, replacement, or  
7 maintenance of property, or to provide indemnification for the repair, replacement,  
8 or maintenance of property, for the operational or structural failure of ~~any motor~~  
9 ~~vehicle, residential property, or other property~~, due to a defect in materials or  
10 workmanship, accidental damage from handling, or normal wear and tear, with or  
11 without additional provisions for incidental payment of indemnity under limited  
12 circumstances, including towing, rental, and emergency road service and road  
13 hazard protection. "Service contract" includes a contract or agreement that provides  
14 for any of the following:

\*\*\*NOTE: The reference to "other property" should be clarified. Should it be limited to personal property, or do you want to refer to other real property as well, in addition to "residential property" (which I assume is intended to refer to residential real property)?

\*\*\*NOTE: The above refers to "separately stated consideration." Separate from what?

\*\*\*NOTE: Throughout this draft, I refer to "including," instead of "including but not limited to." Under the LRB's drafting policies, the phrase "but not limited to" is redundant and not necessary.

15 1. The repair, replacement, or maintenance of property or indemnification for  
16 the repair, replacement, or maintenance of property for damage resulting from a  
17 power surge or interruption.

\*\*\*NOTE: Based on par. (k) (intro.), a contract or agreement is a service contract if it provides for repair, replacement, maintenance, or indemnification for operational or structural failure of specified property, but only if the failure is due to a defect in materials or workmanship, accidental damage from handling, or normal wear and tear. Am I reading the model act correctly on this point? If so, how does a power surge or interruption fit into this scheme? Is a power surge considered to be accidental damage

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from handling or normal wear and tear? Or is it something else? If it is something else, the above may have to be revised.

2. The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.

\*\*\*\*NOTE: Why is it necessary to include subds. 2. to 6.? Don't the repairs and replacements described in subds. 2. to 6. fall under the definition of "service contract" in par. (k) (intro.)?

3. The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

4. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting.

5. The repair of small motor vehicle windshield chips or cracks but which expressly excludes the replacement of the entire windshield.

\*\*\*\*NOTE: What is intended by "but which expressly excludes..."? Does it mean that the agreement is allowed to expressly exclude such replacements? If so, why is it necessary to say that?

6. The repair of damage to the interior components of a motor vehicle caused by wear and tear but which expressly excludes the replacement of any part or component of a motor vehicle's interior.

\*\*\*\*NOTE: See the NOTE above regarding "but which expressly excludes..."

\*\*\*\*NOTE: The model act includes the following drafter's note: "The inclusion of tire and wheel, paintless dent removal, windshield repair, and appearance care products within the definition of "service contract" shall only apply in those states which currently do not have a regulatory framework applicable to motor vehicle service contracts and in which the SCIC has voted to enact the Model Act in. This language should be omitted from any proposed legislation in states where the regulator has opined that these products currently fall within the definition of a service contract or are otherwise unregulated. It shall not be a goal of the SCIC to revisit states with existing service contract laws to

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*You have reinserted the following:*

authorize these ancillary product offerings within existing laws unless and until directed otherwise by the Council membership." The current Wisconsin statutes do include requirements for the cancellation of future service contracts and motor club service contracts sold by creditors (see subch. IV of ch. 424), as well as the regulation of motor club service contracts (see subch. II of ch. 616), vehicle protection product warranties (see s. 100.203), and motor vehicle rustproofing warranties (see s. 100.205). However, I don't think the foregoing statutes apply to service contracts as defined in the model act. Does that mean that subds. 3. to 6. should be eliminated from the draft? I'm having trouble understanding the model act's drafter's note on this point.

\*\*\*\*NOTE: ~~The model act also provides: "Service contracts are not insurance in this state or otherwise regulated under the insurance code." Such a result is accomplished in the creation of s. 600.01 (1) (b) 12.~~

*INSERT 6A*

- 1 (L) "Service contract holder" means a person who is the purchaser or holder of  
2 a service contract.

\*\*\*\*NOTE: I deleted "or contract holder" and made sure the draft refers to "service contract holders" throughout the draft. Therefore, there is no need to refer to "or contract holder."

\*\*\*\*NOTE: Other than a purchaser, who else could be the holder of a contract?

- 3 (m) "Warranty" means a warranty made solely by the manufacturer, importer,  
4 or seller of property or services without consideration, that is not negotiated or  
5 separated from the sale of the product, <sup>or services</sup> that is incidental to the sale of the product, <sup>or services</sup>  
6 and that guarantees indemnity for defective parts, mechanical or electrical  
7 breakdown, labor, or other remedial measures, such as repair or replacement of the  
8 property or repetition of services.

\*\*\*\*NOTE: The above first refers to the sale of "property or services," and then refers to the sale of a "product." For the sake of clarity, the above should be revised to consistently refer to either "property or services" or to "products." Please let me know your preference.

\*\*\*\*NOTE: Instead of saying that a warranty is made "without consideration," would it be more accurate to say that a warranty is made without consideration that is separate from the consideration given for the property, services, or product?

\*\*\*\*NOTE: What does it mean to say that a warranty is not "separated" from the sale of a product?

- 9 (2) APPLICABILITY. (a) This section does not apply to any of the following:

\*\*\*NOTE: This section is based on section 1 (B) and (C) of the model act.

\*\*\*\*NOTE: Section 1 (D) of the model act provides that agreements specified in pars. (a) 1. to 5 and (b) and service contracts are not insurance and are not subject to any provision of the insurance law of this state. With respect to service contracts, including those specified in par. (a) 3., 4., and 5. and par. (b), I accomplished your intent by creating

s. 600.01 (1) (b) 12., which exempts all service contracts from the insurance law requirements set forth in chs. 600 to 646. Please confirm that you want to also exempt any warranty or maintenance agreement from those requirements.

1. Warranties as defined in sub. (1) (m) or s. 100.203 (1) (g) or 100.205 (1) (g).

\*\*\*\*NOTE: In addition to warranties as defined for purposes of this section, the above also exempts vehicle protection product warranties under s. 100.203 and motor vehicle rustproofing warranties under s. 100.205.

2. Maintenance agreements.

3. Warranties, as defined in sub. (1) (m), service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the public service commission.

\*\*\*\*NOTE: If all types of warranties and maintenance agreements are exempt under subds. 1. and 2., it is redundant to specify that the above specific types of warranties and maintenance agreements are exempt. Therefore, I would revise the above to delete the reference to warranties and maintenance agreements. Please let me know if you agree.

\*\*\*\*NOTE: What do you mean by "to the extent" regulated by the PSC? Does that mean that one has to consider not only whether there is PSC regulation, but also the extent of that regulation? And what follows if the PSC does not regulate to a sufficient extent, whatever that is? Is the exemption only partial?

\*\*\*\*NOTE: What is a "transmission device"? Can you give me some examples? I want to make sure that the term "transmission device" accomplishes your intent.

4. Service contracts sold or offered for sale to persons other than consumers.

5. Service contracts on tangible property where the tangible property for which the service contract is sold has a purchase price of \$100 or less, exclusive of sales tax.

- (b) Motor vehicle manufacturer's service contracts on the motor vehicle manufacturer's products are exempt from this section, except for subs. (4) (a) and (d) to (L), (5), and (8).

\*\*\*\*NOTE: The model act provides that motor vehicle manufacturer's service contracts must comply with section 3F of the model act, which corresponds to sub. (3) (i) of this draft, which provides that, except for sub. (3) (c) (sample contract) and (d) (registration), no other financial security requirements may be imposed on service contract providers. A reference to sub. (3) (i) would be confusing, as sub. (3) (i) does not impose any requirements on motor vehicle manufacturer's service contracts. Therefore, I did not refer to sub. (3) (i). Is it your intent to apply sub. (3) (c) and (d) to manufacturer's service contracts? If so, the above should be revised to specify that sub. (3) (c) and (d) apply.

(3) REQUIREMENTS FOR DOING BUSINESS. (a) *Appointment of administrator.* A provider may, but is not required to, appoint an administrator to be responsible for any or all of the administration of service contracts and compliance with this section.

\*\*\*\*NOTE: The model act refers to appointing an administrator "or other designee". I deleted the reference to "other designee" to ensure that any person appointed by a provider is an administrator for purposes of the draft.

(b) *Receipt and copy of contract.* A service contract may not be issued, sold, or offered for sale in this state unless the provider of the service contract has done all of the following:

1. Provided a receipt for, or other written evidence of, the purchase of the service contract to the service contract holder.

2. Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(c) *Sample contract.* A provider shall provide a consumer with a complete sample copy of the service contract terms and conditions prior to the time of sale upon a request for the same by the consumer. A provider may comply with this paragraph by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to an Internet Web site containing a complete sample of the terms and conditions of the service contract.

\*\*\*\*NOTE: Does the above apply only if the consumer requests a sample copy? What if a consumer doesn't know about option to request?

(d) *Registration.* <sup>(INSERT 8-17)</sup> <sup>(9) 3. A person who engages</sup> Each provider of service contracts <sup>in the business of service contracts</sup> sold in this state shall <sup>submit an application for</sup> file a registration with the commissioner consisting of <sup>the person's</sup> their name, full business address, telephone number, and contact person and designate a person in this state for service of process. <sup>The person</sup> Each ~~provider~~ shall pay to the commissioner a fee in the amount specified in s. 601.31 (1) (kr) upon initial registration and every year thereafter. The

(INSERT 8-21)

- 1 registration need only be updated by written notification to the commissioner if  
2 material changes occur in the registration <sup>application</sup> on file. <sup>with the commissioner</sup>

\*\*\*NOTE: Instead of referring to "full corporate address" as in the model act, the above refers to "full business address." Is that okay?

\*\*\*NOTE: Section 12 (A) of the model act states: "A person engaged in the service contract business, as a provider or otherwise, in this state on or before the effective date of this Act, which submits an application for registration as a provider pursuant to this Act within 30 days after the Commissioner makes the applications available, may continue to engage in business as a provider in this state until final agency action is taken by the commissioner regarding the registration application and all rights to administrative judicial review have been exhausted or expired." I didn't include comparable language in the draft because I don't think it is necessary. The model act requires providers to register, but does not prohibit unregistered providers from engaging in the service contract business. As a result, as long as a provider applies for registration and otherwise complies with the Act's requirements, the provider can engage in the service contract business, even before OCI registers the provider. Is that okay?

\*\*\*NOTE: The draft, as well as the model act, does not specify conditions under which OCI can deny a registration. As a result, registration appears to be a purely ministerial act. Is that okay? Also, note that there are no grounds for OCI to revoke a registration. However, from an enforcement standpoint, revocation of registration is not necessary, as OCI does have authority under sub. (7) (c) 1. to issue an order that prohibits a provider from selling service contracts in violation of s. 100.70.

\*\*\*NOTE: To be consistent with other fees imposed by OCI, I set forth the \$200 registration fee in s. 601.31 (1) (kr). Also note that s. 601.31 (1) (kr) allows OCI to set a lesser amount by rule. However, OCI may not increase the fee above \$200 without statutory authority. Is that okay?

- (e) Assurance of performance; in general. Each provider shall <sup>be responsible</sup> comply with the assurance of performance requirements specified in par. (f) <sup>or</sup> (g) <sup>or</sup> (h).

\*\*\*NOTE: I restructured the model act to conform to the LRB's numbering conventions. Also note that I revised the model act's language for the above.

- (f) Assurance of performance; insurance. A provider may satisfy par. (e) by doing all of the following:
1. Insuring all service contracts under a reimbursement insurance policy issued by an insurer that is authorized to do business in this state and that, at the time the policy is filed with the commissioner and continuously thereafter, satisfies either of the following:

\*\*\*NOTE: What does the reference to filing the policy with the commissioner refer to? Must the policy be filed with the commissioner under this section or does it refer to filing under a provision under current law, such as under ch. 625 for rate approval or ch. 631 for form approval?

Insert 9-10

1 a. Maintains surplus as to policyholders and paid-in capital of at least  
2 \$15,000,000.

3 b. Maintains surplus as to policyholders and paid-in capital of less than  
4 \$15,000,000 but at least \$10,000,000 and demonstrates to the satisfaction of the  
5 commissioner that the insurer maintains a ratio of net premiums written, wherever  
6 written, to surplus as to policyholders and paid-in capital of not greater than 3 to  
7 one.

8 \*\*\*\*NOTE: Do you want the above surplus provisions to apply regardless of whether  
9 they comply with ch. 623?

10 2. Annually filing copies of the reimbursement insurer's audited financial  
11 statements, its National Association of Insurance Commissioner's annual  
statement, and any actuarial certification required by and filed in the insurer's  
domiciliary state, as defined in s. 600.03 (18).

\*\*\*\*NOTE: Do these copies get filed with the commissioner? Should the provider or  
the insurer be responsible for filing them?

\*\*\*\*NOTE: I have never heard of NAIC annual statements. Do all insurers have to  
file annual statements with the NAIC?

\*\*\*\*NOTE: I modified the above requirements in a way that made sense to me. It  
was hard to tell from the structure of the proposed language whether the requirements  
above apply to the provider or the reimbursement insurer. As it is drafted, the provider  
may obtain insurance but the requirements under subd. 1. a. and b. apply to the insurer  
and the requirements under subd. 2. apply to the provider with respect to the insurer.  
Are any changes needed to the way in which I have drafted this?

12 (g) Assurance of performance; funded reserve account or trust. A provider may  
13 satisfy par. (e) by doing any of the following.

14 1. Maintaining a funded reserve account for its obligations under its service  
15 contracts issued and outstanding in this state. The reserves shall not be less than  
16 40 percent of gross consideration received, less claims paid, on the sale of the service  
17 contract for all service contracts that are in force. The reserve account shall be  
18 subject to examination and review by the commissioner.

Insert 10-11

2. Placing in trust with the commissioner a financial security deposit that is equal to \$25,000; or 5 percent of the gross consideration received, less claims paid, on the sale of service contracts issued and in force in this state; whichever is greater. The financial security deposit shall consist of one of the following:

\*\*\*\*NOTE: Please review the changes I made in the above to the model act's language.

a. A surety bond issued by an authorized surety.

\*\*\*\*NOTE: Who is an "authorized" surety? Who does the authorizing?

b. Securities of the type eligible for deposit by insurers authorized to do business in this state.

c. Cash.

d. A letter of credit issued by a qualified financial institution.

\*\*\*\*NOTE: What is a "qualified" financial institution? Who does the qualifying?

e. Another form of security prescribed in rules promulgated by the commissioner.

g (h) Assurance of performance; net worth or financial forms. A provider may satisfy par. (e) by maintaining, or together with its parent company maintaining, a net worth or stockholders' equity of \$100,000,000. Upon the request of the commissioner, the provider shall provide the commissioner with a copy of the provider's or the provider's parent company's most recent U.S. Securities and Exchange Commission form 10-K or form 20-f that is filed pursuant to 15 USC 78L (b) or (g), 78m, or 78o (d), or, if the provider or parent company does not file with the U.S. Securities and Exchange Commission, a copy of the company's audited financial statements which shows a net worth of the provider or its parent company of at least \$100,000,000. If the provider's parent company's form 10-K, form 20-f, or financial statements are provided to the commission under this paragraph, the parent

used to satisfy the requirements of



1 company shall agree to guarantee the obligations of the provider relating to service  
2 contracts sold by the provider in this state.

\*\*\*\*NOTE: Why is the requirement for the parent company to guarantee the obligations of a provider contingent upon OCI requesting, and the provider providing, copies of the specified forms or financial statements? Is there a better way to describe the circumstances under which a parent company must make the guarantee?

\*\*\*\*NOTE: The references to the SEC forms are based on the references in a. 100.203  
(3) (b)

3 h (d) *Commissioner limitation.* Except for the requirements specified in pars. (c)  
4 and (d), *and (e)* ~~above~~ no other financial security requirements shall be required by the  
5 commissioner for service contract providers.

25 SEP 12-5  
\*\*\*\*NOTE: The above is based on section 3 (F) of the model act, which refers to section 3 (C) and (D) of the model act, which correspond to pars. (c) and (d). However, the above is confusing, as pars. (c) (sample contract) and (d) (registration) are not financial security requirements. Even if pars. (c) and (d) were financial security requirements, what is the intent of the above? Please clarify your intent so that I can draft language that accomplishes your intent.

6 i (d) *Contract return or cancellation.* 1. Service contracts shall require the  
7 provider to permit the service contract holder to return the service contract within  
8 20 days of the date the service contract was mailed to the service contract holder, or  
9 within 10 days of delivery if the service contract is delivered to the service contract  
10 holder at the time of sale, or within a longer time period permitted under the service  
11 contract. Upon return of the service contract to the provider within the applicable  
12 time period, if no claim has been made under the service contract prior to its return  
13 to the provider, the service contract is void and the provider shall refund to the  
14 service contract holder, or credit the account of the service contract holder, with the  
15 full purchase price of the service contract. The right to void the service contract  
16 under this subdivision is not transferable and shall apply only to the original service  
17 contract purchaser, and only if no claim has been made prior to its return to the  
18 provider. If a provider does not pay or credit a refund within 45 days after the return

1 of a service contract to the provider, the provider shall pay a 10 percent per month  
2 penalty which the provider shall add to amount of the refund.

~~\*\*\*NOTE: I restructured the last sentence, so please make sure it achieves your intent.~~

3 2. Subsequent to the time period specified in subd. 1. for returning a service  
4 contract or, if a claim has been made under a service contract, within such time  
5 period, a service contract holder may cancel the service contract and the provider  
6 shall refund to the service contract holder 100 percent of the unearned pro rata  
7 provider fee, less any claims paid. A provider may charge a reasonable  
8 administrative fee for the cancellation, which may not exceed 10 percent of the gross  
9 provider fee paid by the service contract holder.

~~\*\*\*\*NOTE: I restructured the last sentence, so please make sure it achieves your intent.~~

~~\*\*\*\*NOTE: The model act also includes section 3 (H) (1), which states: "Provider fees collected on service contracts shall not be subject to premium taxes." Because a service contract is not subject to insurance law under chs. 600 to 646 (see s. 600.01 (1) (b) 12.), the Department of Revenue will not treat a service contract like an insurance policy that is subject to premium taxes. Therefore, the model act's language is not necessary. The model act also includes section 3 (H) (2), which states: "Premiums for reimbursement insurance policies shall be subject to applicable taxes." The foregoing is redundant and not necessary, as the state's tax law sets forth the requirements that will apply to the premiums.~~

~~\*\*\*\*NOTE: The model act also includes section 3 (I), which exempts "providers and related service contract sellers, administrators, and other persons marketing, selling or offering to sell service contracts" from "any licensing requirements of this state," except for the registration requirements under par. (d). I did not include the foregoing because the reference to "any licensing requirements of this state" is overly broad. Note that s. 600.01 (1) (b) 12. exempts providers, sellers, and administrators of service contracts from insurance law requirements under chs. 600 to 646. Are there additional provisions of current law for which you want to create exemptions?~~

~~\*\*\*\*NOTE: As noted above, section 3 (I) of the model act exempts a "related" seller, administrator, or other person who markets, sells, or offers to sell a service contract. What do you mean by "related"? Must there be a specified relationship between the foregoing and provider for the foregoing to qualify for an exemption? Or does the language I created in s. 600.01 (1) (b) 12. satisfy your intent on this point?~~

~~\*\*\*\*NOTE: The model act also includes section 3 (J), which states: "The marketing, sale, offering for sale, issuance, making, proposing to make and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from all other provisions of this state's insurance law." The foregoing is not necessary, as an exemption from insurance law requirements is created in s. 600.01 (1) (b) 2.~~

INSEPT  
13-9

1           (4) REQUIRED DISCLOSURES. (a) Service contracts marketed, sold, offered for  
2 sale, issued, made, proposed to be made, or administered in this state shall be  
3 written, printed, or typed in clear, understandable language that is easy to read.

~~\*\*\*\*NOTE: The model act also says that service contracts "shall disclose the requirements set forth in this [subsection], as applicable." However, that language is not necessary and redundant.~~

4           (b) Service contracts insured under a reimbursement insurance policy  
5 pursuant to sub. (3) (f) shall contain a statement in substantially the following form:  
6 "Obligations of the provider under this service contract are insured under a service  
7 contract reimbursement insurance policy." The service contract shall also state the  
8 name and address of the insurer.

~~\*\*\*\*NOTE: You could eliminate arguments over whether a statement is in "substantially the following form" by specifying the exact language that must be used.~~

9           (c) Service contracts not insured under a reimbursement insurance policy  
10 pursuant to sub. (3) (f) shall contain a statement in substantially the following form:  
11 "Obligations of the provider under this service contract are backed by the full faith  
12 and credit of the provider."

~~\*\*\*\*NOTE: What do you mean by "full faith and credit"? I think that concept is limited to governmental guarantees and is not appropriate for private contracts. Please elaborate on your intent so that I can revise the above language.~~

13           (d) Service contracts shall state the name and address of the provider, and shall  
14 identify any administrator that is different from the provider, the service contract  
15 seller, and the service contract holder, if the name of the service contract holder has  
16 been furnished by the service contract holder. The identities of such parties are not  
17 required to be preprinted on the service contract and may be added to the service  
18 contract at the time of sale.

19           (e) Service contracts shall state the total purchase price and the terms under  
20 which service contract is sold. The purchase price is not required to be preprinted

INSERT  
14-12

1 on the service contract and may be negotiated at the time of sale with the service  
2 contract holder.

3 (f) Service contracts shall identify any applicable deductible amount.

4 (g) Service contracts shall specify the merchandise and services to be provided  
5 and any limitations, exceptions, or exclusions.

6 (h) Service contracts covering ~~automobiles~~ *motor vehicles* shall state whether the use of the  
7 nonoriginal manufacturers' parts is allowed.

~~\*\*\*NOTE: Should the above refer to "motor vehicle" instead of "automobile"?~~

8 (i) Service contracts shall state any applicable restrictions governing the  
9 transferability of the service contract.

10 (j) Service contracts shall state the terms, restrictions, or conditions governing  
11 cancellation of the service contract prior to the termination or expiration date of the  
12 service contract by either the provider or the service contract holder. The provider  
13 of the service contract shall mail a written notice to the service contract holder at the  
14 last known address of the service contract holder contained in the records of the  
15 provider at least 5 days prior to cancellation by the provider. Prior notice is not  
16 required if the reason for cancellation is nonpayment of the provider fee, a material  
17 misrepresentation by the service contract holder to the provider, or a substantial  
18 breach of duties by the service contract holder relating to the covered product or its  
19 use. The notice shall state the effective date of the cancellation and the reason for  
20 the cancellation. If a service contract is cancelled by the provider for a reason other  
21 than nonpayment of the provider fee, the provider shall refund to the service contract  
22 holder 100 percent of the unearned pro rata provider fee, less any claims paid. A  
23 provider may charge a reasonable administrative fee for cancellation, which may not  
24 exceed 10 percent of the gross provider fee paid by the service contract holder.

~~\*\*\*NOTE: I restructured the last sentence. Also, note that the last sentence allows a provider to charge an administrative fee if the provider cancels for any reason. Is that okay?~~

1 (k) Service contracts shall set forth all of the obligations and duties of the  
2 service contract holder, including the duty to protect against any further damage and  
3 any requirement to follow the owner's manual.

4 (L) Service contracts shall state whether or not the service contract provides  
5 for or excludes consequential damages or preexisting conditions. Service contracts  
6 may, but are not required to, cover damage resulting from rust, corrosion, or damage  
7 caused by a noncovered part or system.

~~\*\*\*NOTE: Why is the 2nd sentence necessary?~~

8 (5) PROHIBITED ACTS. (a) 1. A provider shall not use in its name the words  
9 "insurance," "casualty," "surety," or "mutual" or any other words descriptive of the  
10 insurance, casualty, or surety business; or a name deceptively similar to the name  
11 or description of any insurance or surety corporation, or to the name of any other  
12 provider. The word "guaranty" or a similar word may be used by a provider.

13 2. Subdivision 1. does not apply to a provider that was using any language  
14 prohibited under subd. 1. in its name prior to the effective date of this subdivision  
15 .... [LRB inserts date]. Such a provider shall include in its service contracts a  
16 statement in substantially the following form: "This agreement is not an insurance  
17 contract."

18 (b) A provider or its representative shall not in its service contracts or literature  
19 make, permit, or cause to be made any false or misleading statement, or deliberately  
20 omit any material statement that would be considered misleading if omitted.

1 (c) A person, including a bank, savings and loan association, lending  
2 institution, manufacturer, or seller of any product, shall not require the purchase of  
3 a service contract as a condition of a loan or a condition for the sale of any property.

4 (d) A motor vehicle service contract provider or its representative shall not,  
5 directly or indirectly, represent in any manner, whether by written solicitation or  
6 telemarketing, a false, deceptive, or misleading statement with respect to any of the  
7 following:

\*\*\* NOTE: Is it necessary to create a definition for "motor vehicle service contract,"  
or, based on the definition of "service contract," will the meaning be clear? Note the term,  
"motor vehicle service contract," is also used in subd. 4, below.

- 8 1. The provider's affiliation with a motor vehicle manufacturer.
- 9 2. The provider's possession of information regarding a motor vehicle owner's  
10 current motor vehicle manufacturer's original equipment warranty.
- 11 3. The expiration of a motor vehicle owner's current motor vehicle  
12 manufacturer's original equipment warranty.
- 13 4. A requirement that a motor vehicle owner register for a new motor vehicle  
14 service contract with the provider in order to maintain coverage under the motor  
15 vehicle owner's current motor vehicle service contract or manufacturer's original  
16 equipment warranty.

17 (6) RECORD-KEEPING REQUIREMENTS. (a) 1. A provider shall keep accurate  
18 accounts, books, and records concerning transactions regulated under this section.

19 2. A provider's accounts, books, and records shall include all of the following:

- 20 a. Copies of each type of service contract sold.
- 21 b. The name and address of each service contract holder that has furnished  
22 such information to the provider.

## SECTION 1

1 c. A list of the locations where service contracts are marketed, sold, or offered  
2 for sale. *in this state*

~~\*\*\*NOTE: Should the above be limited to locations in this state?~~

3 d. Written claims files which shall contain at least the dates and description  
4 of claims related to the service contracts.

5 3. Except as provided in par. (b), a provider shall retain all records required to  
6 be maintained under this paragraph for a service contract for at least one year after  
7 the period of coverage specified in the contract has expired.

~~\*\*\*\*NOTE: I revised the language in the model act to refer to the period of coverage  
specified in a service contract.~~

8 4. The records required under this paragraph may be, but are not required to  
9 be, maintained on a computer disk or other record-keeping technology. If the records  
10 are maintained in other than hard copy, the records shall be capable of duplication  
11 to legible hard copy at the request of the commissioner.

12 (b) A provider discontinuing business in this state shall maintain its records  
13 until it furnishes the commissioner satisfactory proof that it has discharged all  
14 obligations to service contract holders in this state.

15 *28* (7) ENFORCEMENT PROVISIONS. (a) The commissioner may conduct examinations  
16 of providers, administrators, insurers, or other persons to enforce the provisions of  
17 this section and protect service contract holders in this state. Upon request of the  
18 commissioner, a provider shall make all accounts, books, and records concerning  
19 service contracts sold by the provider available to the commissioner which are  
20 necessary to enable the commissioner to reasonably determine compliance with this  
21 section.

*INSERT 18-14*

1 (b) The commissioner may take action which is necessary or appropriate to  
2 enforce the provisions of this section and the commissioner's rules and orders, and  
3 to protect service contract holders in this state.

\*\*\*\*Note: In the model act, the language for pars. (c) to (e) below are included in  
the same paragraph as par. (b).

4 (c) 1. If a provider has violated this section or the commissioner's rules or  
5 orders, the commissioner may issue an order directed to the provider to cease and  
6 desist from committing violations of this section or the commissioner's rules or  
7 orders; may issue an order prohibiting a service contract provider from selling or  
8 offering for sale service contracts in violation of this section; or may issue an order  
9 imposing a forfeiture that is subject to par. (e) on the provider, or any combination  
10 of the foregoing as the commission determines are applicable.

\*\*\*\*Note: I changed the model act's "as applicable" to "as the commission  
determines are applicable."

\*\*\*\*NOTE: The model act allows the commissioner to impose a "civil penalty," which  
is referred to as a "forfeiture" under current law. I added the reference to par. (e) to limit  
the amount that OCI may impose. Is that okay? Also note that any forfeitures that OCI  
collects will be deposited in the school fund, as required by article X, section 2, of the  
Wisconsin Constitution.

11 2. A person aggrieved by an order issued under subd. 1. may request a hearing  
12 before the commissioner. The hearing request shall be filed with the commissioner  
13 within 20 days of the date the commissioner's order is effective.

14 3. If a hearing is requested under subd. 2., an order issued by the commissioner  
15 under subd. 1. shall be suspended from the original effective date of the order until  
16 completion of the hearing and final decision of the commissioner.

17 4. At a hearing, the burden shall be on the commissioner to show why the order  
18 issued under subd. 1. is justified. Chapter 227 shall apply to a hearing requested  
19 under subd. 2.



(d) The commissioner may bring an action for an injunction or other appropriate relief to enjoin threatened or existing violations of this section or of the commissioner's orders or rules. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this section or orders or rules of the commissioner.

(e) A person who violates this section or orders or rules of the commissioner is subject to a forfeiture of not more than \$500 per violation and not more than \$10,000 in the aggregate for all violations of a similar nature. For purposes of this paragraph, violations are of a similar nature if the violations consist of the same or similar course of conduct, action, or practice, irrespective of the number of times the act, conduct, or practice which is determined to violate this section occurred.

~~\*\*\*NOTE: The model act refers to a "civil penalty," which is referred to as a "forfeiture" under Wisconsin law. The above limit on forfeitures applies to those imposed by OCI under par. (c) 1. or by a court.~~

SECTION 2. 600.01 (1) (b) 12. of the statutes is created to read:

600.01 (1) (b) 12. Providers, sellers, or administrators of service contracts under s. 100.70.

~~\*\*\*NOTE: The above is based on s. 600.01 (1) (b) 11, which exempts vehicle protection product warranties under s. 100.203 from insurance requirements.~~

SECTION 3. 601.31 (1) (kr) of the statutes is created to read:

601.31 (1) (kr) For processing and maintaining registration records under s. 100.70 (3) (d), <sup>3.</sup> a fee to be set by the commissioner by rule but not to exceed \$200 annually.

~~\*\*\*NOTE: The above is based on s. 600.31 (1) (km), which applies to registration fees that OCI collects for vehicle protection product warranties. Note that the fees are credited to OCI's general program operations appropriation under s. 20.145 (1) (g) 1.~~

SECTION 4. 601.32 (1) of the statutes is amended to read:

INSERT 20-19

601.32 (1) If the moneys credited to s. 20.145 (1) (g) 1. under other sections of the statutes prove inadequate for the office's supervision of insurance industry program, the commissioner may increase any or all of the fees imposed by s. 601.31, except s. 601.31 (1) (kr), or may in any year levy a special assessment on all domestic insurers, or both, for the general operation of that program.

\*\*\*\*NOTE: The above prohibits OCI from increasing service contract registration fees above \$200.

SECTION 5. 632.19 of the statutes is created to read:

**632.19 Service contract reimbursement insurance.** (1) In this section:

(a) "Provider" has the meaning given in s. 100.70 (1) (h).

(b) "Service contract" has the meaning given in s. 100.70 (1) (k)

(2) (a) A reimbursement insurance policy that insures service contracts and that is issued, sold, or offered for sale in this state shall state that the insurer issuing the policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or shall, in the event of the provider's nonperformance, provide the service that the provider is legally obligated to perform in accordance with the provider's contractual obligations under service contracts issued or sold by the provider and covered under the reimbursement insurance policy

\*\*\*\*NOTE: Does one reimbursement insurance policy cover all service contracts sold by the provider?

(b) Insurers issuing service contract reimbursement insurance to providers are considered to have received the premiums for that insurance upon payment by consumers of fees for service contracts issued by insured providers

\*\*\*\*NOTE: This doesn't make any sense. The model language was written in the plural, making it even harder to understand what the meaning is. Does it mean that a service contract provider doesn't actually have to pay a premium for service contract reimbursement insurance, since the insurer is considered to have been paid for the insurance when consumers pay for service contracts? Or does it mean that a particular service contract is covered by the insurance when the consumer pays the contract fee? If the latter, it wouldn't seem necessary to have this language if a provider obtains one

Insert 21-19

policy that covers all service contracts issued by the provider. That would be part of the insurance contract language, i.e., that the policy covers all contracts issued by the provider. Alternatively, you could say that a service contract is covered under the provider's reimbursement insurance policy when the consumer pays the fee for the service contract. That may be the more direct way of stating what the intention is.

1 (c) If a provider does not provide, or reimburse or pay for, a service that is  
2 covered under a service contract within 60 days after a contract holder provides proof  
3 of loss, the contract holder may apply directly to the service contract reimbursement  
4 insurer for reimbursement, payment, or provision of the service.

5 (d) An insurer issuing a service contract reimbursement insurance policy may  
6 not terminate the policy in the manner provided in s. 631.36 until the insurer has  
7 provided a notice of termination to the commissioner.

Insert 22-7

\*\*\*\*NOTE: I'm not aware of any other type of insurance that requires termination notice to the commissioner before notice is sent to the policyholder. Generally, notice goes to the policyholder only. Section 655.24(4) requires an insurer that terminates a health care liability insurance policy to notify the commissioner *after* termination of such a policy, but there may be a need to know since the fund under ch. 655 (Injured Patients and Families Compensation Fund) pays claims that exceed health care liability insurance limits of providers who carry insurance with at least the minimum required limits. Why would the commissioner need to know when a service contract reimbursement insurance policy is going to be terminated?

\*\*\*\*NOTE: I did not include the language about termination not reducing the reimbursement insurance insurer's responsibility for service contracts before termination of the insurance because that goes without saying and would be a provision of the insurance contract, i.e., whether the policy pays for claims that occur or that are made *while the policy is in effect*.

8 (3) Nothing in this section or s. 100.70 prevents, or limits the right of, an  
9 insurer that issued a service contract reimbursement insurance policy to seek  
10 indemnification from or subrogation against a provider if the insurer pays or is  
11 obligated to pay the service contract holder any amount that the provider was  
12 obligated to pay under the service contract.

13 **SECTION 6. Initial applicability.**

INS CAT 23-1

1 (1) SERVICE CONTRACTS. The treatment of section 100.70 of the statutes first  
2 applies to service contracts that are issued, sold, or offered for sale, on the effective  
3 date of this subsection.

4 (2) REIMBURSEMENT INSURANCE.

5 (a) The treatment of section 632.19 (2) (a) of the statutes first applies to service  
6 contract reimbursement insurance policies that are issued or renewed on the  
7 effective date of this paragraph.

8 (b) If a service contract reimbursement insurance policy that is in effect on the  
9 effective date of this paragraph contains a provision that is inconsistent with section  
10 632.19 (2) (b), (c), or (d) <sup>1. or 2.</sup> for (3) of the statutes, section 632.19 (2) (b), (c), or (d) <sup>1. or 2.</sup> for (3)  
11 of the statutes first applies to that insurance policy on the date on which it is  
12 renewed.

13 **SECTION 7. Effective date.**

14 (1) This act takes effect on January 1, ~~2013~~.

\*\*\*\*NOTE: The model act does not specify the year in which it takes effect. Do you want the bill to take effect on January 1, 2013? 2014? Or do you want to delay the bill by a period of time after its publication date, such as 3, 6, or 12 months after publication?

\*\*\*\*NOTE: Section 11 of the model act consists of the following: "If any provision at this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected." Such a severability provision is not necessary, as s. 990.001 (11), provides that the unconstitutionality of any provision of the statutes or of a session law does not affect other provisions that can be given effect independently of the unconstitutional provision if severing the unconstitutional portion does not foil the legislature's manifest intent.

(END)

INS CAT 23-15

D-Note

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2677/P2ins  
MDK&PJK&JK:.....

**INSERT 1-4:**

**SECTION 1.** 71.45 (3) (a) of the statutes is amended to read:

71.45 (3) (a) Subject to sub. (3d), the percentage determined by dividing the sum of direct premiums written for insurance other than life insurance, with respect to all property and risks resident, located, or to be performed in this state, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in this state, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located, and assumed premiums written for reinsurance on all property and risks, other than life insurance, wherever located. In this paragraph, "direct premiums" means direct premiums as reported for the taxable year on an annual statement that is filed by the insurer with the commissioner of insurance under s. 601.42 (1g) (a), including premiums paid for reimbursement insurance policies, but not including fees collected on service contracts. In this paragraph, "assumed premiums" means assumed reinsurance premiums from domestic insurance companies as reported for the taxable year on an annual statement that is filed with the commissioner of insurance under s. 601.42 (1g) (a).

**History:** 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 32.

\*\*\*\*NOTE: The above modifies the definition of direct premiums used to compute income and franchise taxes imposed on insurers under subchapter VII of chapter 71. Is this consistent with your intent? Please note that, for Wisconsin tax purposes, it is appropriate to put tax modifications in the tax chapters and not in other chapters that are not tax-related. (Joseph Kreye)

**SECTION 2.** 76.62 of the statutes is amended to read:

**76.62 License fees; calculation of.** All license fees and taxes levied under any provision of law upon gross premiums other than life insurance premiums

1 against any insurer shall be uniformly calculated on the amount of gross premiums  
2 received for direct insurance less return premiums and cancellations and returns  
3 from savings and gains on all insurance other than reinsurance by the insurer during  
4 the preceding year in this state. For purposes of this section, "gross premiums"  
5 include premiums for reimbursement insurance policies, but do not include fees  
6 collected on service contracts.

History: 1979 c. 102 s. 22; Stats. 1979 s. 76.62; 1989 a. 31.

\*\*\*\*NOTE: The above modifies the definition of gross premiums used to compute license fees imposed on insurers under subchapter III of chapter 76. Is this consistent with your intent? Please note that, for Wisconsin tax purposes, it is appropriate to put tax modifications in the tax chapters and not in other chapters that are not tax-related. (Joseph Kreye)

7 **INSERT 2-2:**

8 to be responsible for any or all of the administration of service contracts and  
9 compliance with the section

10 **INSERT 2-3:**

*No changes*  
\*\*\*\*NOTE: I revised the above to use the same language as in proposed s. 100.70 (3) (a). You want instead to say that an administrator is a person appointed by a provider "to be responsible for the administration of the service contracts or the service contracts plan or who is responsible for any submission required under this section." Note that the term "service contracts plan" or "plan" is not otherwise used in this bill. Therefore, it would be confusing to use the term in the above. As for "any submission required under this section," what submissions are you referring to? The only thing that the bill requires a provider to submit is an application for registration to OCI. If the above does not satisfy your intent, please clarify your intent so that I can draft something that accomplishes your intent. (Mark Kunkel)

11 **INSERT 4-14:**

\*\*\*\*NOTE: Please review the above reference to "the operational or structural failure of property." It appears that your suggested revision has a typo, so I want to make sure that the above reference is okay. (Mark Kunkel)

*X*  
\*\*\*\*NOTE: In the prior version of the bill, I pointed out that I use the term "includes" in the bill, rather than "includes, but is not limited to." Note that s. 2.01 (1) (i) of the LRB's drafting manual provides: "The term 'includes' conveys a meaning of nonexclusiveness and allows a court or administering agency to adopt additional meanings; using 'means' restricts them to reasonable constructions of your wording. Do not use 'includes but is not limited to.' That phrase is redundant." (Mark Kunkel)

12 **INSERT 5-13:**

\*\*\*\*NOTE: I revised the above to refer to "motor vehicle windshield chips or cracks," instead of "small motor vehicle windshield chips or cracks." Aren't all chips and cracks

considered to be small? If so, it isn't necessary to say that they are small. Also note that I reworded the exclusion for replacement of an entire windshield. (Mark Kunkel)

1

**INSERT 5-16:**

\*\*\*\*NOTE: I reworded the exclusion for replacement of any part or component of a motor vehicle's interior. (Mark Kunkel)

2

**INSERT 6A:**

X  
I cannot include that language here because it does not logically follow the introductory text in the last sentence of par. (k) (intro.), "Service contract" includes a contract or agreement that provides for any of the following: ...." Also, note that your intent is accomplished in proposed s. 100.70 (7), which I have added to the bill. (Mark Kunkel)

3

**INSERT 7-4:**

4

for the transmission of public utility service to customers

5

**INSERT 7-5:**

6

such warranties, service contracts, or maintenance agreements

7

**INSERT 7-6:**

\*\*\*\*NOTE: I'm still confused about the intent of the above exemption and how the exemption relates to the other exemptions in subds. 1., 2., 4., and 5. If the PSC does not regulate a warranty, service contract, or maintenance agreement described above, then the above exemption does not apply to the warranty, service contract, or maintenance agreement. What about the other exemptions in subds. 1., 2., 4., and 5.? Should they still apply, or does the inapplicability of the above exemption override those exemptions? (Mark Kunkel)

\*\*\*\*NOTE: I revised the reference to "transmission devices." Is my revision okay? (Mark Kunkel)

8

**INSERT 7-11:**

\*\*\*\*NOTE: The exemption from insurance regulation for warranties, maintenance agreements, and service contracts is set forth in proposed s. 100.70 (7), which I added to this bill. (Mark Kunkel)

9

**INSERT 8-17:**

10

1. Except as provided in subd. 2., no person may engage in the business of selling service contracts in this state unless the commissioner issues a registration to the person under subd. 3.

11

12

13

14

2. A person who was engaged in the business of selling service contracts in this state on or before the effective date of this subdivision .... [LRB inserts date], and

1 who, no later than the first day of the <sup>2nd</sup> second month beginning after the effective date  
2 of this subdivision .... [LRB inserts date], submits an application for registration and  
3 pays an initial registration fee under subd. 3. may continue to engage in the business  
4 of selling service contracts in this state state until the commissioner takes final  
5 action on the application. For purposes of this subdivision, an action is final if the  
6 action has been finally determined on appeal, if all time for filing an appeal or  
7 petition for review with respect to the action has expired, or if the action is not subject  
8 to judicial review.

9 **INSERT 8-21:**

10 <sup>no \$</sup> Upon receipt of an application that complies with this subdivision and payment of  
11 the initial registration fee, the commission shall issue a registration to the applicant.

12 **INSERT 9-2:**

\*\*\*\*NOTE: I revised par. (d) to clarify that, except for persons engaged in the service contract business on or before the effective date of the bill, a person may not engage in that business unless OCI issues a registration to the person. (Mark Kunkel)

13 **INSERT 9-3:**

14 <sup>no \$</sup> In order to assure the faithful performance of a provider's obligations to its contract  
15 holders,

16 **INSERT 9-4:**

\*\*\*\*NOTE: I added the text, "In order to assure the faithful performance of a provider's obligations to its contract holders." However, I don't think that language has any practical significance. A provider must comply with par. (f) or (g) regardless of whether the foregoing text is included. Please be aware that including the text could have unintended consequences, as it may give a court the opportunity to interpret the requirements in a way that is inconsistent with your intent. Also note that, like the prior version of the above, this version requires a provider to comply with only one of the specified requirements. This result is achieved by use of the word "or." An intent to require compliance with all the requirements would have been accomplished with the word "and." (Mark Kunkel)

17 **INSERT 9-10:**



1 (f) *Assurance of performance; insurance.* A provider may satisfy par. (e) by ✓  
2 insuring all service contracts under a reimbursement insurance policy issued by an  
3 insurer that is authorized to do business in this state and that satisfies all of the  
4 following:

5 1. At the time the policy is filed with the commissioner under s. 631.20 and ✓  
6 continuously thereafter, the insurer satisfies either of the following:

\*\*\*\*NOTE: I limited the filing to s. 631.20 because I'm not sure the policy is filed  
when rates are filed under s. 625.13. Additionally, rates must be filed within 30 days after  
use while forms must be filed before use, so the filings would not necessarily occur at the  
same time. (Pam Kahler)

7 **INSERT 10-11:**

8 2. The insurer annually files with the commissioner copies of all of the  
9 following:

- 10 a. Its audited financial statements.  
11 b. Its National Association of Insurance Commissioners annual statement.  
12 c. Any actuarial certification required by and filed in the insurer's domiciliary  
13 state, as defined in s. 600.03 (18). ✓

14 **INSERT 12-5:**

\*\*\*\*NOTE: I'm still confused about the above. Paragraph (d) requires a provider to  
register with OCI and pay initial registration and annual fees. How is that a "financial  
security" requirement? I think the reference to par. (d) ✓ should be deleted. (Mark Kunkel)

15 **INSERT 13-9:**

\*\*\*\*NOTE: The exemption of service contracts from insurance regulation can be  
found in proposed s. 100.70 (7), which I added to the bill. (Mark Kunkel)

16 **INSERT 14-12:**

X \*\*\*\*NOTE: I understand that the above language is included in the statutes of other  
states, but I'm still not sure what it accomplishes. If your intent is to put consumers on  
notice that the above types of service contracts are not backed by reimbursement  
insurance, you could take the approach recommended by the Missouri Attorney General's  
Office, which recommended the following disclosure for motor vehicle service contracts  
that are not backed by reimbursement insurance: "Obligations of the provider under this  
service contract are backed only by the full faith and credit of the provider (issuer) and  
are not guaranteed under a service contract reimbursement policy." See Missouri Auto  
to

Service Contract Task Force, *Report and Recommendations of the Office of the Attorney General of Missouri*, January 2011. (Mark Kunkel)

**INSERT 18-14:**

(7) EXEMPTION FROM INSURANCE REGULATION. A person who markets, sells, offers for sale, issues, makes, proposes to make, or administers a warranty, maintenance agreement, or service contract shall not be considered an insurer, and a warranty, maintenance agreement, or service contract shall not be considered an insurance contract, for any purpose under the statutes.

\*\*\*\*NOTE: The above is new language that I added to the bill, which I think accomplishes the intent of the exemptions in sections 1 (D) and 3 (J) of the model act. (Mark Kunkel)

**INSERT 20-18:**

no \$ upon initial registration and annually thereafter, unless the commission specifies a different amount by rule

**INSERT 20-19:**

\*\*\*\*NOTE: Because you want the bill to take effect as soon as possible, I revised the above to establish the fee amount in the statutes, which OCI may revise by rule. Under the approach taken in the prior version, OCI was required to set the amount by rule, subject to a \$200 maximum. The above approach eliminates the delay that would have resulted from rule-making. (Mark Kunkel)

**INSERT 21-19:**

\*\*\*\*NOTE: I made this language singular, which I think makes it more understandable. (Pam Kahler)

**INSERT 22-7:**

2. The termination of a provider's service contract reimbursement insurance policy does not reduce the insurer's responsibility with respect to service contracts issued by the provider before the date of the termination.

\*\*\*\*NOTE: The implication from the above language is that all reimbursement insurance policies are written to cover any claim made under any service contract that is issued while the reimbursement insurance policy is in effect. Is this the actual case? Is it possible for a reimbursement insurance policy to be written to cover only claims made under a covered service contract while the policy is in effect? If so, subd. 2. above is incorrect. Also, should "and covered under the policy" be added after "issued by the provider"? (Pam Kahler)

**INSERT 23-1:**

(1) TAXES. The treatment of sections 71.45 (3) (a) and 76.62 of the statutes first applies to taxable years beginning on January 1, 2012.

**INSERT 23-14:**

on the first day of the 3rd month beginning after publication

**INSERT 23-15:**

\*\*\*\*NOTE: The above delays the effective date by approximately 2 months after publication. (Note that the first day of the 3rd month after publication ensures a delay of at least 2 months after publication.) You indicated that you want the bill to take effect as soon as possible, but I think a short delay is advisable in order to give businesses regulated by the bill time to make changes necessary to comply with the bill. Is that okay? (Mark Kunkel)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

*Date*

LRB-2677/P2dn

MDK/.....

*PSK/JK:  
lgf*

Rep. Nygren:

This version of the bill contains NOTES which raise questions about some of the responses we received from the previous version of the bill. In the NOTES, we have identified the attorney who drafted a particular NOTE. After we resolve the questions, we will prepare a version of the bill that can be introduced.

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**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2677/P2dn  
MDK/PJK/JK:kjf:rs

November 10, 2011

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